

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 MANUEL MELENDEZ,

5 Petitioner

6 v.

7 BRIAN WILLIAMS, et al.,

8 Respondents  
9

Case No.: 2:19-cv-00731-JAD-CWH

**Order Dismissing Petition and Denying  
Application for Leave to Proceed *In Forma  
Pauperis***

[ECF Nos. 1 & 1-1]

10 Petitioner Manuel Melendez has filed this petition for writ of habeas corpus under 28  
11 U.S.C. § 2241<sup>1</sup> and moves for leave to proceed *in forma pauperis*.<sup>2</sup> Because I find that  
12 Melendez is able to pay the filing fee, I deny his pauper application. But I will not require  
13 Melendez to pay the filing fee because this action must be dismissed as duplicative of a petition  
14 that is already pending before me.

15 Melendez is in custody under a state-court judgment of conviction in Eighth Judicial  
16 District Court Case No. C241873, and the claims he raises in this case pertain to that conviction.<sup>3</sup>  
17 Because Melendez challenges the state-court judgment of conviction under which he is currently  
18 being held, § 2241 is not the appropriate procedural vehicle for his claims. Instead, his claims  
19 must be pursued, if at all, under 28 U.S.C. § 2254.

20 But Melendez has already filed, and is currently pursuing, a § 2254 petition for his  
21 conviction in C241873. That petition, for which he is represented by counsel, is pending in Case  
22 No. 2:15-cv-2076-JAD-VCF. The petition in this case is therefore duplicative of that already-  
23 pending petition and serves no legitimate purpose. Any claims Melendez wishes to pursue  
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26 <sup>1</sup> ECF No. 1-1.

27 <sup>2</sup> ECF No. 1.

28 <sup>3</sup> See ECF No. 1-1 at 1.

1 regarding his conviction in C241873 must be asserted, if at all, in the petition Case No. 2:15-cv-  
2 2076-JAD-VCF.<sup>4</sup> So I dismiss the instant petition without prejudice as duplicative.

3 IT IS THEREFORE ORDERED that the application for leave to proceed *in forma*  
4 *pauperis* (ECF No. 1) is **DENIED**.

5 IT IS FURTHER ORDERED that **this action is dismissed without prejudice as**  
6 **duplicative of Case No. 2:15-cv-2076-JAD-VCF.**

7 IT IS FURTHER ORDERED that Melendez is DENIED a certificate of appealability  
8 because jurists of reason would not find my dismissal of this petition to be debatable or wrong.

9 The Clerk of Court is directed to ENTER FINAL JUDGMENT ACCORDINGLY AND  
10 CLOSE THIS CASE.

11 Dated: May 13, 2019

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13 U.S. District Judge Jennifer A. Dorsey  
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27 <sup>4</sup> I make no representation that any claims Melendez might seek to add to his currently pending  
28 petition would be timely or that leave to amend would be granted in that case. I hold only that,  
to the extent Melendez wishes to pursue the claims in this petition, they may be pursued only in  
the petition he has already filed and that is currently pending.